

157437

[4910-13]

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 91

[Docket No. FAA-2002- 11580-2 ; SFAR 94]

EP 2/19/02

RIN 2120-AH62

Enhanced Security Procedures for Operations at Certain Airports in the Washington, DC Metropolitan Area Special Flight Rules Area

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule, request for comments.

SUMMARY: This action requires any person operating an aircraft to or from College Park Airport (CGS), Potomac Airfield (VKX), and Washington Executive/Hyde Field (W32) to conduct those operations in accordance with security procedures approved by the Administrator. Operations under 14 CFR part 91 have been prohibited at these airports as a result of Notices to Airmen (NOTAMs) issued after September 11, 2001. This action is being taken to restore aircraft operations at these airports while attempting to counter possible terrorist threats to the National Capital region.

DATES: This action is effective [insert date of public inspection at the Office of the Federal Register], and shall remain in effect until [insert date 1 year after date of public inspection at the Office of the Federal Register]. Submit comments by [insert date 60 days after date of publication in the Federal Register].

ADDRESSES: Address your comments to the Docket Management System, U.S.

Department of Transportation, Room Plaza 401, 400 Seventh Street, SW, Washington,

Displayed: 2/13/02 at 10:45 AM
Pub: 2/19/02
CC: 4/22/02
Effective date: 2/13/02

DC 20590. You must identify the docket number FAA-2002- 11580 at the beginning of your comments, and you should submit two copies of your comments. If you wish to receive confirmation that the FAA received your comments, include a self-addressed, stamped postcard. You may also submit comments through the Internet to <http://dms.dot.gov>.

You may review the public docket containing comments to these regulations in person in the Dockets Office between 9:00 a.m. and 5:00p.m., Monday through Friday, except Federal holidays. The Dockets Office is on the plaza level of the NASSIF Building at the Department of Transportation at the above address. You may also review public dockets on the Internet at <http://dms.dot.gov>.

FOR FURTHER INFORMATION CONTACT:

Questions on this rulemaking: Bruce Landry, ACP-200, Office of Civil Aviation Security Policy and Planning, Federal Aviation Administration, 800 Independence Avenue, SW, Washington, D.C. 20591; telephone (202) 267-8320.

Questions on security procedures and obtaining security procedure approval or waivers: Washington Civil Aviation Security Field Office (WAS CASFO), Washington Dulles International Airport, 45005 Aviation Drive Suite 110, Washington, DC 20166; telephone (703) 661-6070. You can also find guidance on drafting security procedures at <http://cas.faa.gov/usa.html>.

SUPPLEMENTARY INFORMATION:

Comments Invited

This final rule is being adopted without prior notice and prior public comment. The Regulatory Policies and Procedures of the Department of Transportation (DOT) (44 FR 1134; Feb 26, 1979) provide that, to the maximum extent possible, operating administrations for the DOT should provide an opportunity for public comment on regulations issued without notice. Accordingly, interested persons are invited to participate in the rulemaking by submitting written data, views, or arguments. Comments relating to the environmental, energy, federalism, or economic impact that might result from this amendment also are invited. Comments must include the docket number or amendment number and must be submitted in duplicate to the address above. All comments received, as well as a report summarizing each substantive public contact with FAA personnel concerning this rulemaking, will be filed in the public docket. The docket is available for public inspection before and after the comment closing date.

The FAA will consider all comments received on or before the closing date for comments. Late-filed comments will be considered to the extent practicable. The final rule may be amended in light of the comments received.

See “ADDRESSES” above for information on how to submit comments.

Availability of This Action

You can get an electronic copy using the Internet by taking the following steps:

- (1) Go to search function of the Department of Transportation’s electronic Docket Management System (DMS) Web page (<http://dms.dot.gov/search>).

(2) On the search page type in the last five digits of the docket number shown at the beginning of this document. Click on “search.”

(3) On the next page, which contains the docket summary information for the Docket you selected, click on the final rule.

You can also get an electronic copy using the Internet through FAA’s web page at <http://www.faa.gov/avr/armhome.htm> or the Government Printing Office’s web page at http://www.access.gpo.gov/su_docs/aces/aces140html.

You can also get a copy by submitting a request to the Federal Aviation Administration, Office of Rulemaking, ARM-1, 800 Independence Avenue, SW, Washington, DC 20591, or by calling (202) 267-9680. Be sure to identify the amendment number or docket number of this final rule.

Small Entity Inquiries

The Small Business Regulatory Enforcement Fairness Act (SBREFA) of 1996 requires the FAA to comply with small entity requests for information or advice about compliance with statutes and regulations within the FAA’s jurisdiction. Therefore, any small entity that has a question regarding this document may contact its local FAA official. Internet users can find additional information on SBREFA on the FAA’s web page at <http://www.faa.gov/avr/arm/sbrefa.htm> and send electronic inquiries to the following Internet address: 9-AWA-SBREFA@faa.gov.

Background

After the September 11, 2001, terrorist attacks against four U.S. commercial aircraft resulting in the tragic loss of human life at the World Trade Center, the Pentagon, and in southwest Pennsylvania, the FAA immediately prohibited all aircraft operations within the territorial airspace of the United States, with the exception of certain military, law enforcement, and emergency related aircraft operations. This general prohibition was lifted in part on September 13, 2001. In the Washington, DC Metropolitan area, however, aircraft operations remained prohibited at all civil airports within a 25-nautical mile radius of the Washington (DCA) VOR/DME. This action was accomplished through emergency air traffic rules issued pursuant to title 14, Code of Federal Regulations (14 CFR) 91.139 and the implementation of temporary flight restrictions (TFRs) issued pursuant to 14 CFR 91.137.

On October 4, 2001, limited air carrier operations were permitted to resume at Ronald Reagan Washington National Airport (DCA). On October 5, 2001, the FAA issued NOTAM 1/0989, which authorized instrument flight rules (IFR) operations and limited visual flight rules (VFR) operations within an 18 to 25 nautical mile radius from the DCA VOR/DME in accordance with emergency air traffic rules issued under 14 CFR 91.139. Exceptions to the restrictions affecting part 91 operations in the Washington, DC area issued since September 11th were made to permit the repositioning of aircraft from airports within the area of the TFR and to permit certain operations conducted under waivers issued by the FAA.

On December 19, 2001, the FAA canceled NOTAM 1/0989 and issued NOTAM 1/3354 that set forth special security instructions under 14 CFR 99.7 and created a new TFR under 14 CFR 91.137. That action significantly decreased the size of the area subject to the earlier prohibitions on part 91 operations in the Washington, DC area and permitted operations at Freeway (W00), Maryland (2W5), and Suburban (W18) airports. At the same time, the FAA eliminated all “enhanced Class B airspace flight restrictions” Enhanced Class B airspace consisted of that airspace underlying and overlying Class B airspace from the surface to flight level 180. The associated rules and/or the services prescribed for Class B airspace and the underlying/overlying airspace were not changed by the imposition or elimination of Enhanced Class B airspace flight restrictions.

Although many of the restrictions on operations in the Washington, DC area have been eliminated, NOTAM 1/3354 continues to prohibit aircraft operations under part 91 at College Park Airport, Potomac Airfield, and Washington Executive/Hyde Field. In 2000, approximately 89,000 part 91 operations were conducted from these airports. The current restrictions have caused significant economic hardship for these airport operators, aircraft owners and operators based at the airports, and businesses located on, or dependent upon, the continued operation of the airports. These operational restrictions have remained in effect longer than the restrictions imposed in other areas because of the proximity of the airports to the significant number of critical government assets in the National Capital region and the continuing threat to that area.

After discussions with the National Security Council, the United States Secret Service, the Department of Defense, and the Office of Homeland Security, it was determined that national security concerns regarding operations at College Park Airport,

Potomac Airfield, and Washington Executive/Hyde Field could be addressed by permitting operations at these airports in accordance with the air traffic and security procedures set forth in this SFAR. Applying the restrictions in this SFAR to operations to or from these airports will help to protect critical national assets against an airborne threat while permitting the resumption of operations at these airports. This action is taken in accordance with the Administrator's statutory mandate found in section 44701(a)(5) of Title 49, United States Code (49 U.S.C.) to promote the safe flight of civil aircraft in air commerce by prescribing regulations and minimum standards necessary for safety in air commerce and national security.

Justification for Emergency Final Rule

Because flight operations at airports affected by this SFAR have been prohibited since September 11, 2001, and in recognition of the need to restore operations at these airports in a manner that responds to the current security threat, the FAA is adopting this SFAR as an emergency final rule pursuant to section 553 of the Administrative Procedures Act (APA). Section 553(b)(B) of the APA permits an agency to forego notice and comment rulemaking when "the agency for good cause finds...that notice and public procedures thereon are impracticable, unnecessary or contrary to the public interest." The FAA finds that the use of notice and public procedures for this SFAR is impracticable and contrary to the public interest. The use of notice and comment procedures prior to issuing this final rule would only delay the relief provided by this SFAR to airport operators, aircraft operators, and businesses affected by the prohibition on operations at the affected airports. A delay would significantly increase the economic

burden on persons conducting operations that have been prohibited under previous actions enacted without notice and public comment and possibly result in the permanent closure of affected airports. As previously noted, however, the FAA is requesting comments on this SFAR and may modify the rule in response to these comments.

Discussion

Affected Airports and Operations

This SFAR requires each person operating an aircraft to or from College Park Airport (CGS), Potomac Airfield (VKX), and Washington Executive/Hyde Field (W32) to comply with specified air traffic procedures and security procedures approved by the Administrator. As a general operating rule, its provisions apply to any person operating an aircraft to or from one of these airports. It affects all aircraft operations at these airports, including those conducted under 14 CFR part 91, those for which an air carrier or an operating certificate may be issued under 14 CFR part 119 (14 CFR parts 121, 125, and 135), and those which may be conducted under part 129, 133, or 137.

The provisions of this rule do not apply to the operation of ultralight vehicles, which must be conducted in accordance with 14 CFR part 103. Part 103 contains prohibitions on the operation of ultralight vehicles in certain airspace, including both prohibited and restricted areas, and other areas designated by NOTAM. Operators of ultralight vehicles should review current NOTAMs to determine the status of ultralight operations at these airports and within the special flight rules area.

Although the FAA considered including operations to or from other airports within the Washington, DC Metropolitan Area Special Flight Rules Area under the

provisions of this rule, only operations to or from the three airports specified in this SFAR are subject to its provisions. The FAA intends to specifically address air traffic and security procedures for part 91 operations at other airports within the Washington, DC Metropolitan Area Special Flight Rules Area in future actions.

In formulating this rule, the FAA considered retaining the current prohibition on operations to and from these airports and permitting operations at these airports with operational restrictions more stringent than those imposed by this rule. The FAA has determined, however, that it is inappropriate and unnecessary to continue the current prohibition on operations at these airports, and that the costs of imposing more restrictive measures on such operations would far outweigh any potential benefits.

Definitions

For the purpose of this rule, the FAA defines the terms “Administrator” and “Washington, DC Metropolitan Area Special Flight Rules Area.”

The definition of “Administrator” is similar to the definition of “Administrator” contained in 14 CFR 1.1. The definition includes a reference to the Under Secretary of Transportation for Security, which clarifies that the Under Secretary may also take any of those actions that may be taken by the Administrator under this rule.

The SFAR also defines the Washington, DC Metropolitan Area Special Flight Rules Area. The airspace defined as the Washington, DC Metropolitan Area Special Flight Rules Area generally approximates an area that varies in distance from 13 to-15 nautical miles from the Washington (DCA) VOR/DME (with specific exclusions to

permit operations at Freeway airport (W00) and a VFR corridor between Washington and Baltimore).

Operating Requirements

Under the provisions of this SFAR, no person may operate an aircraft to or from an affected airport unless security procedures have been approved by the Administrator for operations at that airport. Additionally, each person serving as a required flightcrew member of an aircraft operating to or from an affected airport must provide certain information to the Administrator, meet certain background requirements, comply with specified air traffic rules, and comply with the approved security procedures for operations at those airports.

This SFAR does not impose information collection requirements on persons intending to operate to or from the affected airports. Rather, the FAA is requiring those persons to present their airman and medical certificates and picture identifications to ensure that the FAA can properly confirm their identities. This identification information will be shared with the United States Secret Service, the Transportation Security Administration (TSA), and other law enforcement authorities to facilitate security checks, background investigations, and criminal records checks necessary to permit a person to receive authorization to operate to or from an airport.

This SFAR requires a person seeking authorization to operate to or from an affected airport to successfully complete a background check by a law enforcement agency. This check routinely requires the submission of fingerprints and the conduct of a criminal history records check. The completion of a background check, which includes

the collection of fingerprints and the conduct of a criminal history records check, will be conducted under the authority provided to the Under Secretary of Transportation for Security in section 101 of the Aviation and Transportation Security Act (Public Law 107-71) as codified in 49 U.S.C. 114(f)(2)(3) and (5). That section states that the Under Secretary has the authority to “assess threats to transportation; develop policies, strategies and plans for dealing with threats to transportation security; [and] serve as the primary liaison to the intelligence and law enforcement communities.”

Any person seeking authorization to operate to or from an affected airport will also be required to identify any aircraft that he or she intends to fly to or from that airport. This information will be correlated with a list of aircraft based at the airport. This list will be provided to the FAA in accordance with an affected airport’s approved security procedures. The FAA initially intends to authorize operations of those aircraft based at an airport on September 11, 2001. After a procedural validation period, the FAA may authorize operations to or from an affected airport by persons operating aircraft not based at the airport.

Persons seeking to operate to or from an affected airport can present the information required by this rule in person to the Washington Civil Aviation Security Field Office (CASFO). To minimize the administrative burden of this procedure, the FAA will have personnel at the affected airports or other local venues to accept this information at specified times.

This SFAR also requires each person seeking authorization to attend a briefing that will describe procedures for operating to or from the airport. The requirement to attend a briefing stems from the FAA’s recognition of the criticality of ensuring full

compliance with the provisions of this SFAR. To ensure all authorized persons understand their responsibilities under this SFAR, attendance at a briefing is a prerequisite to conducting operations at an affected airport. These briefings initially will be presented by FAA Civil Aviation Security, Flight Standards, and Air Traffic Services personnel, and representatives of the Secret Service. The FAA will provide the widest possible dissemination of information specifying the time and place of these briefings. After an initial validation period, the FAA may permit persons responsible for implementing approved security procedures at affected airports or other specified individuals to give these briefings.

To minimize the possibility that a person inclined to engage in an action that might constitute a threat to government assets contained in the National Capital region, the SFAR requires that a person not have been convicted, or found not guilty by reason of insanity, in any jurisdiction of certain crimes during the 10 years prior to being authorized to operate to or from the airport, or while authorized to operate to or from the airport. The information and fingerprints provided by a person seeking to operate to or from an affected airport will be used to facilitate the conduct of criminal records history checks by TSA, or other delegated law enforcement agencies to verify that this requirement has been met. Those crimes which would disqualify an individual from conducting operations at an affected airport are identical to those specified in 14 CFR 108.229 (d) under the authority provided by 49 U.S.C. 44936. Section 108.229(d) applies to employees covered under a certification made to certain airport operators under 14 CFR part 107, individuals issued identification for unescorted access within a security

identification display area (SIDA), and certain individuals assigned to perform or supervise screening functions.

The disqualifying criminal offenses are as follows--

- (1) Forgery of certificates, false marking of aircraft, and other aircraft registration violation; 49 U.S.C. 46306.
- (2) Interference with air navigation; 49 U.S.C. 46308.
- (3) Improper transportation of a hazardous material; 49 U.S.C. 46312.
- (4) Aircraft piracy; 49 U.S.C. 46502.
- (5) Interference with flight crew members or flight attendants; 49 U.S.C. 46504.
- (6) Commission of certain crimes aboard aircraft in flight; 49 U.S.C. 46506.
- (7) Carrying a weapon or explosive aboard aircraft; 49 U.S.C. 46505.
- (8) Conveying false information and threats; 49 U.S.C. 46507.
- (9) Aircraft piracy outside the special aircraft jurisdiction of the United States; 49 U.S.C. 46502(b).
- (10) Aircraft lighting violations involving transporting controlled substances; 49 U.S.C. 46315.
- (11) Unlawful entry into an aircraft or airport area that serves air carriers or foreign air carriers contrary to established security requirements; 49 U.S.C. 46314.
- (12) Destruction of an aircraft or aircraft facility; 18 U.S.C. 32.
- (13) Murder.
- (14) Assault with intent to murder.
- (15) Espionage.

- (16) Sedition.
- (17) Kidnapping or hostage taking.
- (18) Treason.
- (19) Rape or aggravated sexual abuse.
- (20) Unlawful possession, use, sale, distribution, or manufacture of an explosive or weapon.
- (21) Extortion.
- (22) Armed or felony unarmed robbery.
- (23) Distribution of, or intent to distribute, a controlled substance.
- (24) Felony arson.
- (25) Felony involving a threat.
- (26) Felony involving--
 - (i) Willful destruction of property;
 - (ii) Importation or manufacture of a controlled substance;
 - (iii) Burglary;
 - (iv) Theft;
 - (v) Dishonesty, fraud, or misrepresentation;
 - (vi) Possession or distribution of stolen property;
 - (vii) Aggravated assault;
 - (viii) Bribery; or
 - (ix) Illegal possession of a controlled substance punishable by a maximum term of imprisonment of more than 1 year.
- (27) Violence at international airports; 18 U.S.C. 37.

(28) Conspiracy or attempt to commit any of the criminal acts listed in this paragraph.

Additionally, TSA or other delegated law enforcement authorities may impose specific requirements for the conduct of operations to or from the affected airports, such as a requirement for the collection of fingerprints to facilitate the completion of a background investigation. Persons seeking to operate to or from the affected airports will be notified of any additional requirements by TSA, other delegated law enforcement authorities, or the FAA. The FAA will not authorize a person to operate to or from an airport unless he or she has complied with these requirements.

A record of a single violation of a prohibited area designated under 14 CFR part 73, a flight restriction established under 14 CFR 91.141 (to protect the President, Vice President, or other public figures), or special security instructions issued under 14 CFR 99.7 is indicative of a potential risk that a pilot may possess a compliance disposition inappropriate for operations to or from airports which are located in close proximity to critical governmental assets. A record of multiple violations of a restricted area designated under 14 CFR part 73, emergency air traffic rules issued under 14 CFR 91.139, a temporary flight restriction designated under 14 CFR 91.137, 91.138, or 91.145 or an area designated under 14 CFR 91.143 (or any combination thereof) is also indicative of a similar risk. In view of the critical need to protect national assets within the Special Flight Rules Area, the FAA will review the records of airmen who request authorization to conduct operations at the affected airports and will not authorize operations if the airman's records contains a history of such violations.

As an alternative, the FAA considered eliminating the personnel verification requirements set forth above. In view of the current threat and the need to help preclude the possibility of persons with hostile intent from conducting operations at these airports, it has been determined that the absence of a personnel verification requirement would impose too significant a risk to the critical governmental assets contained within the National Capital region.

Upon meeting the specified requirements and completing the necessary records checks, an individual will be authorized by the FAA to conduct operations at an affected airport. The authorization will also specify those aircraft in which the person may conduct the authorized operations. Additionally, the authorization provided by the FAA will include a unique identification code, which the individual will use when filing a flight plan with Leesburg Automated Flight Service Station (AFSS), to operate to or from an affected airport. To ensure the security of operations to or from the affected airport, any individual who has received an identification code must protect it from unauthorized disclosure.

Operations to or from the affected airport while within the Special Flight Rules Area will only be permitted in accordance with an open IFR or VFR flight plan. This flight plan must be filed telephonically with Leesburg AFSS. Flight plans filed via Direct User Access Terminals (DUAT), while airborne, or with another Flight Service Station will not be accepted for operations to or from the affected airports.

Prior to departure from the airport, or prior to entering the Special Flight Rules Area en route to an affected airport, a pilot must obtain an air traffic control (ATC) clearance and maintain two-way radio communications with ATC. Aircraft must be

equipped with an operable transponder with altitude reporting capability and transmit an assigned beacon code while operating in the Special Flight Rules Area. Aircraft will normally be cleared to or from the airport via specified direct routes. ATC will not issue clearances that permit closed traffic operations within the traffic patterns at these airports. The applicable ATC procedures will be published in the approved security procedures for the airport and may be published as NOTAMs or as graphical notices in the appropriate Airport/Facility Directory. Any attempt by a pilot to deviate from the assigned route or other provisions of an ATC clearance while within the Special Flight Rules Area will result in the exercise of appropriate protective measures by military or law enforcement personnel.

The SFAR requires that, upon returning to the airport, the operator take appropriate measures to secure the aircraft from unauthorized use. This may consist of locking the aircraft, securing the aircraft in a locked hangar, installing a propeller or throttle lock, or other similar measures.

The FAA recognizes that law enforcement, military, and aeromedical services aircraft may operate from the affected airports. The U.S. Armed Forces and law enforcement agencies have already adopted extensive security procedures to protect their aircraft from unauthorized use. Persons operating these aircraft have been subjected to extensive background and criminal records history checks. Because operators of these aircraft must comply with the extensive security procedures adopted by these agencies and departments, operators of these aircraft will not be subject to the procedural requirements in this rule intended primarily for private aircraft operations. They will, however, be required to comply with those ATC procedures necessary to ensure adequate

control of operations at these airports and other specific requirements imposed by TSA or other delegated law enforcement agencies.

Due to the critical nature of operations conducted in aeromedical services aircraft, persons conducting operations in these aircraft will not be required to comply with the full range of security procedures at affected airports. The unscheduled and frequently critical nature of these operations necessitates relief from many of the security procedures required for other civil aircraft operations. Operators must, however, secure the aircraft while on the ground at the airport and comply with airport arrival and departure routes, ATC clearance procedures, flight plan requirements, communications procedures, procedures for transponder use, and other requirements that may be issued by TSA or other delegated law enforcement agencies.

Airport Security Procedures

This SFAR requires any person conducting operations to or from an affected airport within the Washington, DC Metropolitan Area Special Flight Rules Area to comply with security procedures approved by the Administrator. The affected airports currently are not required to implement security procedures under an approved security program such as that required at Ronald Reagan Washington National Airport under 14 CFR part 107. This rule will provide an increased level of security at affected airports by requiring operations to be conducted in accordance with approved security procedures.

To provide persons seeking approval of security procedures with maximum flexibility in their development and implementation, the SFAR does not mandate that they be developed and implemented only by an airport operator. The SFAR does not

preclude airport owners, airport authorities, and State or local governments from submitting procedures to the Administrator for approval.

For security procedures to be approved for an affected airport they must:

- Identify and provide contact information for the airport manager who is responsible for ensuring that the security procedures at the airport are implemented and maintained;
- Contain procedures to identify those aircraft eligible to be authorized for operations to or from the airport;
- Contain procedures to ensure that a current record of those persons authorized to conduct operations to or from the airport and the aircraft in which the person is authorized to conduct those operations is maintained at the airport;
- Contain airport arrival and departure route descriptions, air traffic control clearance procedures, flight plan requirements, communications procedures, and procedures for transponder use;
- Contain procedures to monitor the security of aircraft at the airport during operational and non-operational hours and to alert aircraft owners and operators, airport operators, and the Administrator of unsecured aircraft;
- Contain procedures to ensure that security awareness procedures are implemented and maintained at the airport;
- Contain procedures to ensure that a copy of the approved security procedures is maintained at the airport and can be made available for inspection upon request of the Administrator;

- Contain procedures to provide the Administrator with the means necessary to make any inspection to determine compliance with the approved security procedures; and
- Contain any additional procedures necessary to provide for the security of aircraft operations to or from the airport.

The requirements specified in these security procedures are based upon current intelligence and threat assessments provided to the FAA. The FAA recognizes that the SFAR imposes requirements upon aircraft operators that will result in increased costs and inconvenience. The FAA has weighed these costs against the continued prohibition of aircraft operations at airports affected by the SFAR and has determined that affording operators of airports affected by this rule with an opportunity to resume operations is in the public interest.

In developing requirements for the contents of approved security procedures, the FAA considered numerous alternatives. For example, the FAA considered requiring an individual with law enforcement authority to inspect departing aircraft (and verify the identities of their occupants) at the affected airports and to require arriving aircraft to land at “gateway airports” outside the Special Flight Rules Area for similar inspections and checks prior to proceeding to an affected airport. The FAA determined that such requirements would impose significant costs on airport operators and persons conducting operations to or from the affected airports. Additionally, such requirements would significantly decrease the use of the affected airports and result in the further relocation of aircraft away from the airports specified in this rule. The FAA also considered permitting

security personnel without law enforcement authority or personnel employed by fixed base operators to perform these inspections and checks. These alternatives were rejected for similar reasons.

To provide the FAA with a means to effectively ensure that security procedures are being implemented and maintained, approved security procedures must include the name and contact information for the airport manager who has responsibility for this task. The airport manager is specifically identified on the airport operating license issued by the Maryland Department of Transportation for an airport. The FAA must be able to contact this person if any deviation from the requirements of the approved security procedures is discovered. That action will ensure that any discrepancy is immediately corrected.

The requirement to identify aircraft eligible to be authorized to operate at an airport is intended to afford the FAA the means to effectively control operations at the airport. To properly evaluate the implementation of approved procedures, the FAA may initially only authorize the arrival and departure of aircraft based at an affected airport, and pilots conducting operations in such aircraft. By providing the FAA a list of based aircraft, the FAA will be able to more rapidly provide relief to those persons most in need of authorization to conduct operations at the affected airports.

The FAA will provide the approval holder with a list of those persons authorized to conduct operations at an airport and the aircraft those persons are authorized to operate. Upon authorizing any additional person to conduct operations at an airport, the FAA will provide the approval holder with a revised list. This list must be maintained at the airport. This list should be given the widest possible dissemination at the airport to ensure that all persons conducting operations there are aware of its contents. It can be used to assist all

personnel at the airport when monitoring operations in accordance with the airport's security awareness program.

Airport arrival and departure route descriptions, air traffic control clearance procedures, flight plan requirements, communications procedures, and procedures for transponder use will be established by ATC. Requiring these procedures to be included in the approved security procedures will provide all operators with an additional readily available reference to consult in flight planning. A copy of the security procedures must also be made available for inspection by the Administrator upon request.

Approval holders must also implement and maintain a security awareness program at the airport. This program should address both airport and aircraft security and include procedures for persons conducting operations at the airport to report suspicious activity. Approval holders should notify all operators of the need to monitor the security of aircraft at the airport and to establish procedures to immediately secure any unsecured aircraft. A means of rapidly notifying aircraft owners of improperly secured aircraft or non-compliance with the approved security procedures for an airport is essential.

Although security procedures must meet the requirements of the SFAR, persons seeking approval of security procedures should ensure that the procedures are tailored to meet the specific operational needs of airport and aircraft operators. The security procedures should address the various types of threat vulnerabilities that could apply to operations conducted to or from the affected airport. The FAA expects that threat conditions may change rapidly, and therefore may withdraw approvals of security procedures or require the implementation of revised security procedures at certain times in response to changed threats. Additionally, to ensure that the Administrator can evaluate

the effectiveness of approved security procedures, the procedures must describe the means that will be provided to the Administrator to make any inspection to determine compliance with approved security procedures. Non-compliance with approved security procedures may result in withdrawal of the approval for the security procedures at an airport.

The FAA will inform all aircraft operators that an airport has approved security procedures. The FAA will publish specific procedures that airmen must comply with as Notices to Airman (NOTAMs) and in the Airport/Facility Directory. The FAA also expects to publish these procedures on its web site (www.faa.gov). Persons can obtain specific guidance on complying with, drafting, or obtaining approval for security procedures by contacting the Washington Civil Aviation Security Field Office specified under "For Further Information Contact." Persons can also find guidance on drafting security procedures at <http://cas.faa.gov/usa.html>.

Waivers

Paragraph 5 of this SFAR specifies that the FAA may issue a waiver if it finds that an operation at an affected airport is in the public interest, can be conducted safely, and that an equivalent level of security can be provided under the terms of the waiver. The FAA notes, for instance, that some operators subject to this SFAR may be implementing strong security practices that may not meet the specific provisions of the SFAR. The FAA may consider whether those or other practices warrant the grant of a waiver.

Official Contacts

Due to the emergency nature of this rule and the need to develop security procedures that can be rapidly implemented, the FAA has discussed the provisions of this SFAR with representatives of the airports affected by the SFAR and a number of industry associations whose members will also be affected by the SFAR. The FAA has discussed and received information regarding security procedures that could be implemented by these airports from the National Association of State Aviation Officials (NASAO), State of Maryland Department of Aviation, National Business Aviation Association (NBAA), Aircraft Owners and Pilots Association (AOPA), National Air Transportation Association (NATA), Helicopter Association International (HAI), and individual airport operators. Information submitted by these associations and individuals is contained in the docket for this rule.

Justification for Immediate Adoption

Because the circumstances described herein warrant immediate action, the Administrator finds that notice and public comment under 5 U.S.C. 553(b) are impracticable and contrary to the public interest. Further, the Administrator finds that good cause exists under 5 U.S.C. 553(d) for making this rule effective less than 30 days after publication in the Federal Register. This action is necessary to permit aircraft operations to resume at the affected airports while preventing possible hazardous actions directed against aircraft, persons, and property within the United States.

International Compatibility

In keeping with U.S. obligations under the Convention on International Civil Aviation, it is FAA policy to comply with International Civil Aviation Organization (ICAO) Standards and Recommended Practices to the maximum extent practicable. The FAA determined that there are no ICAO Standards and Recommended Practices that correspond to this SFAR.

Paperwork Reduction Act

This emergency rule contains information collection activities subject to the Paperwork Reduction Act (44 U.S.C. 3507(d)). In accordance with the Paperwork Reduction Act, the paperwork burden associated with the rule will be submitted to the Office of Management and Budget (OMB) for review. As protection provided by the Paperwork Reduction Act, an agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number. In accordance with section 3507 (j)(1)(b) of that statute, the FAA requested the Office of Management and Budget to grant an immediate emergency clearance on a paperwork package it has submitted. The collection of information was approved and assigned OMB Control Number 2120-0677 and expires August 2002. The following is a summary of the information collection activity.

Need: This rule will constitute a recordkeeping burden for persons conducting operations at specific airports in the Washington, DC area.

Description of Respondents: Airport operators, flightcrew members, Maryland State government.

Estimated Burden: The FAA expects that this rule will affect three airports, the State of Maryland, and persons flying to or from these airports. The final rule, while imposing additional reporting and recordkeeping requirements on those operators, will have the following impacts:

- All airports will have to prepare a security program and get it approved by the FAA. This will take approximately 30 hours per program.
- Each airport having approved security procedures must maintain a copy of the procedures and make it available to FAA personnel upon request. This will take approximately 10 hours annually per airport, for a total of 30 hours.
- After receipt of a notice to modify its security procedures, an airport operator may either submit modified procedures or request that the FAA reconsider the modification. This will take approximately 4 hours annually per airport, for a total of 12 hours.
- Each airport manager will need to spend 2 hours each to prepare a security-related briefing for all airport employees and pilots. This will take approximately 2 hours per airport, for a total of 6 hours.
- Persons seeking to operate to or from the affected airports will need to provide specific documentation to the FAA. This will take a total of approximately 183 hours.
- Persons seeking to operate to or from the affected airports will need to go to specified locations to get fingerprinted. This will take approximately 438 hours.
- All persons operating to or from these airports will have to file a flight plan.

While the number of flights at these airports may decline, the FAA is assuming

time and costs based on the historical number of flights from each airport. This will take approximately 7,416 hours annually.

- Persons who wish to fly from these three airports after they open will need to receive a briefing and be fingerprinted. This will take approximately 124 hours annually.

Based on the above, we estimate the total annual burden on the public to be 8,299 hours, with a corresponding hourly cost of \$255,868.

Economic Analyses

This rulemaking action is taken under an emergency situation within the meaning of Section 6(a)(3)(D) of Executive Order 12866, Regulatory Planning and Review. It also is considered an emergency regulation under Paragraph 11g of the Department of Transportation (DOT) Regulatory Policies and Procedures. In addition, it is a significant rule within the meaning of the Executive Order and DOT's policies and procedures. No regulatory analysis or evaluation accompanies this rule. The FAA is not able to assess whether this rule will have a significant economic impact on a substantial number of small entities as defined in the Regulatory Flexibility Act of 1980, as amended. When no notice of proposed rulemaking has first been published, no such assessment is required for a final rule. The FAA recognizes that this rule may impose significant costs on some airports and aircraft operators. These costs will occur as a result of developing and implementing security procedures and also as a result of the loss of aircraft and airport utility incurred when those security procedures are implemented. To ensure the safety

and security of operations at the affected airports, however, the current security threat requires that operators comply with approved security procedures.

Executive Order 13132, Federalism

The FAA has analyzed this rule under the principles and criteria of Executive Order 13132, Federalism. The FAA has determined that this action will not have a substantial direct effect on the States, or the relationship between the national Government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, we have determined that this final rule does not have federalism implications.

Unfunded Mandates Reform Act

The Unfunded Mandates Reform Act of 1995 (the Act), enacted as Pub. L. 104-4 on March 22, 1995 is intended, among other things, to curb the practice of imposing unfunded Federal mandates on State, local, and tribal governments. Title II of the Act requires each Federal agency to prepare a written statement assessing the effects of any Federal mandate in a proposed or final agency rule that may result in a \$100 million or more expenditure (adjusted annually for inflation) in any one year by State, local, and tribal governments, in the aggregate, or by the private sector; such a mandate is deemed to be a “significant regulatory action.”

This rule does not contain such a mandate. Additionally, the requirements of Title II of the Unfunded Mandates Reform Act of 1995 do not apply when no notice of

proposed rulemaking has first been published. Accordingly, the FAA has not prepared a statement under the Act.

Environmental Analysis

FAA Order 1050.1D defines FAA actions that may be categorically excluded from preparation of a National Environmental Policy Act (NEPA) environmental impact statement. In accordance with FAA Order 1050.1D, appendix 4, paragraph 4(j) this rulemaking action qualifies for a categorical exclusion.

Energy Impact

The energy impact of this SFAR has been assessed in accordance with the Energy Policy and Conservation Act (EPCA), Pub. L. 94-163, as amended (42 U.S.C. 6362) and FAA Order 1053.1. It has been determined that this SFAR is not a major regulatory action under the provisions of the EPCA.

List of Subjects

14 CFR Part 91

Air traffic control, Aircraft, Airmen, Airports, Aviation safety, Security.

The Amendment

For the reasons stated in the preamble, the Federal Aviation Administration amends 14 CFR chapter I as follows:

PART 91—GENERAL OPERATING AND FLIGHT RULES

1. The authority citation for part 91 continues to read as follows:

Authority: 49 U.S.C. 106(g), 1155, 40103, 40113, 40120, 40101, 44111, 44701, 44709, 44711; 44712, 44715, 44716, 44717, 44722, 46306, 46315, 46316, 46504, 46506-46507, 47122, 47508, 47528-47531, articles 12 and 29 of the Convention on International Civil Aviation (61 stat. 1180).

2. Add Special Federal Aviation Regulation (SFAR) No. 94 to read as follows:

SFAR NO. 94 - ENHANCED SECURITY PROCEDURES FOR OPERATIONS AT CERTAIN AIRPORTS IN THE WASHINGTON, DC METROPOLITAN AREA SPECIAL FLIGHT RULES AREA

1. Applicability. This Special Federal Aviation Regulation (SFAR) establishes rules for all persons operating an aircraft to or from the following airports located within the airspace designated as the Washington, DC Metropolitan Area Special Flight Rules Area:

- (a) College Park Airport (CGS).
- (b) Potomac Airfield (VKX).
- (c) Washington Executive/Hyde Field (W32).

2. Definitions. For the purposes of this SFAR the following definitions apply:

Administrator means the Federal Aviation Administrator, the Under Secretary of Transportation for Security, or any person delegated the authority of the Federal Aviation Administrator or Under Secretary of Transportation for Security.

Washington, DC Metropolitan Area Special Flight Rules Area means that airspace within an area from the surface up to but not including Flight Level 180, bounded by a line beginning at the Washington (DCA) VOR/DME 300 degree radial at 15 nautical miles (Lat. 38° 56' 55" N., Long. 77° 20' 08" W.); thence clockwise along the DCA 15 nautical mile arc to the DCA 022 degree radial at 15 nautical miles (Lat. 39° 06' 11" N., Long. 76° 57' 51" W.); thence southeast via a line drawn to the DCA 049 degree radial at 14 nautical miles (Lat. 39° 02' 18" N., Long. 76° 50' 38" W.); thence south via a line drawn to the DCA 064 degree radial at 13 nautical miles (Lat. 38° 59' 01" N., Long. 76° 48' 32" W.); thence clockwise along the DCA 13 nautical mile arc to the DCA 282 degree radial at 13 nautical miles (Lat. 38° 52' 14" N., Long. 77° 18' 48" W.); thence north via a line drawn to the point of the beginning; excluding the airspace within a one nautical mile radius of Freeway Airport (W00), Mitchellville, Md.

3. Operating requirements.

(a) Except as specified in paragraph 3(c) of this SFAR, no person may operate an aircraft to or from an airport to which this SFAR applies unless security procedures that meet the provisions of paragraph 4 of this SFAR have been approved by the Administrator for operations at that airport.

(b) Except as specified in paragraph 3(c) of this SFAR, each person serving as a required flightcrew member of an aircraft operating to or from an airport to which this SFAR applies must:

(1) Prior to obtaining authorization to operate to or from the airport, present to the Administrator the following:

- (i) A current and valid airman certificate;
- (ii) A current medical certificate;
- (iii) One form of Government issued picture identification; and
- (iv) A list containing the make, model, and registration number of each aircraft that the pilot intends to operate to or from the airport;

(2) Successfully complete a background check by a law enforcement agency, which may include submission of fingerprints and the conduct of a criminal history, records check.

(3) Attend a briefing acceptable to the Administrator that describes procedures for operating to or from the airport;

(4) Not have been convicted or found not guilty by reason of insanity, in any jurisdiction, during the 10 years prior to being authorized to operate to or from the airport, or while authorized to operate to or from the airport, of those crimes specified in §108.229 (d) of this chapter;

(5) Not have a record on file with the FAA of:

- (i) A violation of a prohibited area designated under part 73 of this chapter, a flight restriction established under §91.141 of this chapter, or special security instructions issued under §99.7 of this chapter; or

- (ii) More than one violation of a restricted area designated under part 73 of this chapter, emergency air traffic rules issued under §91.139 of this chapter, a temporary flight restriction designated under §91.137, §91.138, or §91.145 of this chapter, an area designated under §91.143 of this chapter, or any combination thereof;

- (6) Be authorized by the Administrator to conduct operations to or from the airport;
- (7) Protect from unauthorized disclosure any identification information issued by the Administrator for the conduct of operations to or from the airport;
- (8) Operate an aircraft that is authorized by the Administrator for operations to or from the airport;
- (9) File an IFR or VFR flight plan telephonically with Leesburg AFSS prior to departure and obtain an ATC clearance prior to entering the Washington, DC Metropolitan Area Special Flight Rules Area;
- (10) Operate the aircraft in accordance with an open IFR or VFR flight plan while in the Washington, DC Metropolitan Area Special Flight Rules Area, unless otherwise authorized by ATC;
- (11) Maintain two-way communications with an appropriate ATC facility while in the Washington, DC Metropolitan Area Special Flight Rules Area;
- (12) Ensure that the aircraft is equipped with an operable transponder with altitude reporting capability and use an assigned discrete beacon code while operating in the Washington, DC Metropolitan Area Special Flight Rules Area;
- (13) Comply with any instructions issued by ATC for the flight;
- (14) Secure the aircraft after returning to the airport from any flight;
- (15) Comply with all additional safety and security requirements specified in applicable NOTAMs; and
- (16) Comply with any Transportation Security Administration, or law enforcement requirements to operate to or from the airport.

(c) A person may operate a U.S. Armed Forces, law enforcement, or aeromedical services aircraft to or from an affected airport provided the operator complies with paragraphs 3(b)(10) through 3(b)(16) of this SFAR and any additional procedures specified by the Administrator necessary to provide for the security of aircraft operations to or from the airport.

4. Airport Security Procedures.

(a) Airport security procedures submitted to the Administrator for approval must:

(1) Identify and provide contact information for the airport manager who is responsible for ensuring that the security procedures at the airport are implemented and maintained;

(2) Contain procedures to identify those aircraft eligible to be authorized for operations to or from the airport;

(3) Contain procedures to ensure that a current record of those persons authorized to conduct operations to or from the airport and the aircraft in which the person is authorized to conduct those operations is maintained at the airport;

(4) Contain airport arrival and departure route descriptions, air traffic control clearance procedures, flight plan requirements, communications procedures, and procedures for transponder use;

(5) Contain procedures to monitor the security of aircraft at the airport during operational and non-operational hours and to alert aircraft owners and operators, airport operators, and the Administrator of unsecured aircraft;

(6) Contain procedures to ensure that security awareness procedures are implemented and maintained at the airport;

(7) Contain procedures to ensure that a copy of the approved security procedures is maintained at the airport and can be made available for inspection upon request of the Administrator;

(8) Contain procedures to provide the Administrator with the means necessary to make any inspection to determine compliance with the approved security procedures; and

(9) Contain any additional procedures necessary to provide for the security of aircraft operations to or from the airport.

(b) Airport security procedures are approved without an expiration date and remain in effect unless the Administrator makes a determination that operations at the airport have not been conducted in accordance with those procedures or that those procedures must be amended in accordance with paragraph 4.(a)(9) of this SFAR.

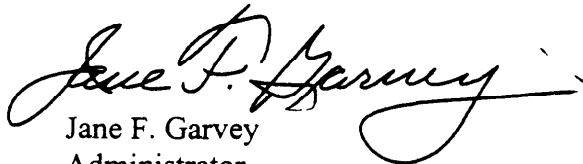
5. Waivers. The Administrator may permit an operation to or from an airport to which this SFAR applies, in deviation from the provisions of this SFAR if the Administrator finds that such action is in the public interest, provides the level of security required by this SFAR, and the operation can be conducted safely under the terms of the waiver.

6. Delegation. The authority of the Administrator under this SFAR is also exercised by the Associate Administrator for Civil Aviation Security and the Deputy

Associate Administrator for Civil Aviation Security. This authority may be further delegated.

7. Expiration. This Special Federal Aviation Regulation shall remain in effect until [insert date 1 year after date of public inspection at the Office of the Federal Register].

Issued in Washington, DC on February ^{FEB 12 2002}, 2002.


Jane F. Garvey
Administrator